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No. 08-426

Supreme Court U.S.
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In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR REHEARING

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TABLE OF CONTENTS

Page

Table of Authorities ii

Petition for Rehearing 1

Grounds for Rehearing 1

REHEARING IS WARRANTED IN LIGHT OF THE FACT THAT THIS COURT RECENTLY ACCEPTED A 14TH AMENDMENT JUDICIAL ETHICS CASE 2

REHEARING IS APPROPRIATE EVEN IF OTHER GROUNDS SUFFICE TO JUSTIFY THE COURT'S DISPOSITION 3

Conclusion 5

Certificate of Counsel 5

TABLE OF AUTHORITIES

Page

CASES:

Ambler v. Whipple, 90 U.S. 278 (1875) 1

Caperton, et al. v. A.T. Massey Coal Co., et al., 2008 WL 918444 1

Harbuck v. Houston County, 284 Ga. 4 (2008) 2, 3

Ware v. Henry County Water and Sewage Authority, 258 Ga. App. 778 (2002) 3

CONSTITUTION, STATUTES AND RULES:

14th Amendment United States Constitution 2, 4

Federal Code of Conduct for United States Judges 3

Sup. Ct. R. 44.1 1

BOOK:

Eugene Gressman, et al., Supreme Court Practice 815-818 (9th Edition 2007) 3

ARTICLE:

CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999 2

PETITION FOR REHEARING

Bonnie Harbuck respectfully petitions for rehearing of the Court's December 1, 2008 decision. Specifically, she asks for an order (1) granting rehearing and (2) setting the case for oral argument as an appropriate, logical, and necessary companion to *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444, or (3) staying the ruling of *Harbuck*'s rehearing until after the Supreme Court has passed decision upon the *Caperton* petition. *Caperton* is set for argument on Tuesday, March 3, 2009.

GROUNDS FOR REHEARING

Although this Court almost never grants petitions for rehearing, this case meets the rare exception contemplated by Sup. Ct. R. 44.1 and in *Ambler v. Whipple*, 90 U.S. 278, 282 (1875).

Harbuck's case should be co-joined as a companion with *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444, or at least an order staying any outcome of *Harbuck*'s decision until the Court rules in *Caperton*. The question in *Caperton* is on point to the question in *Harbuck* and if a rehearing is at least stayed, then the finality of *Harbuck*'s decision can remain open until the Court adjudicates *Caperton*.

REHEARING IS WARRANTED IN LIGHT OF THE FACT THAT THIS COURT RECENTLY ACCEPTED A 14TH AMENDMENT JUDICIAL ETHICS CASE

Harbuck's case is an appropriate companion to *Caperton*. The question presented is parallel to *Caperton*'s question. Both are 14th Amendment judicial ethics and conflict of interest cases that this Court rarely accepts. Yet it is a question that is time for review. A ruling in *Caperton* will settle many such cases throughout the country on the same constitutional grounds.

States and Federal Circuits all over the country diverge on what is or is not a conflict of interest. CNN reported the Community Rights Counsel Study in 1999, finding that eight federal judges had a conflict of interest. CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999. The judges ranged from the D.C. Circuit, 1st Circuit, 3rd Circuit, 6th Circuit, 7th Circuit, 8th Circuit, and 9th Circuit. This study was more than 9 years ago.

The problem is widespread and not just limited to Georgia in *Harbuck*'s case, or West Virginia in the *Caperton* case. Failure to ensure an impartial judiciary violates the 14th Amendment and also worse than that, erodes the ever declining confidence in the judicial system.

"The test for appearance of impropriety is whether the conduct would create in reasonable

minds, with knowledge of all relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." *Commentary Canon 2A, Code of Conduct for United States Judges.* There should not be some heightened test where bias is of such a nature that would impede impartiality, as Georgia suggests. If the general public who is not a lawyer or a judge would think that impropriety would exist, then that should be our guide. The Georgia Supreme Court stated that bias must be "of such a nature of intensity that it would impede the exercise of impartial judgment." *Harbuck v. Houston County*, 284 Ga. 4 (2008), quoting *Ware v. Henry County Water and Sewage Authority*, 258 Ga. App. 778 (2002).

REHEARING IS APPROPRIATE EVEN IF OTHER GROUNDS SUFFICE TO JUSTIFY THE COURT'S DISPOSITION

While rehearing is rarely granted, this Court has granted rehearing petitions after a decision over 20 times. Eugene Gressman, et al., Supreme Court Practice 815-818 (9th Edition 2007).

Harbuck is a little person. Some would argue that her issue is not worthy of the Supreme Court's attention. After all the amount of money in *Caperton* is a $50 million dollar jury verdict and a $3 million dollar judicial campaign supporter. Yet *Harbuck*'s

case does not even rise to the level of $300,000.00 dollars.

Does the 14th Amendment then apply less to her? Of course not. This Court receives thousands of petitions a year, with rarely a judicial ethics case. The fact that such a similar 14th Amendment case would be on the table at around the same time as *Harbuck*'s proves that the 14th Amendment applies to her as well as the larger *Caperton* case.

The decision in *Caperton*, whatever the outcome, will affect *Harbuck* and many others like her. While it would be an honor for any counsel to argue before this Court a companion case, this case is especially important to counsel, because Harbuck is counsel's mother.

Harbuck's case being so particularly on constitutional point as the larger *Caperton* case, validates Harbuck and her counsel.

In light of the acceptance of the *Caperton* judicial ethics case, *Harbuck*'s case should be combined with the case or stayed until final disposition of a *Caperton* ruling.

CONCLUSION

Accordingly, this Petition should be granted. Alternatively, the Court may stay final ruling in *Harbuck*'s case pending argument and disposition in March 2009 of *Caperton*.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

Bonnie Michelle Smith